`IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
September 15, 2006 Session

JAMES W. THORNTON v. THYSSEN KRUPP ELEVATOR MFG., INC.

Direct Appeal from the Chancery Court for Hardeman County
No. 15090 Hon. Martha B. Brasfield, Chancellor

No. W2006-00254-SC-WCM-WC - Mailed January 29, 2007; Filed April 24, 2007

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Tennessee Supreme Court in accordance with the provisions of Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The Employee suffered an injury to his leg when his knee buckled while he walked across the floor of the Employer's warehouse. The trial court dismissed his cause of action, finding that the injury was idiopathic and not compensable because the Employee had not proven any hazard incident to the employment that caused or exacerbated his injury. The Employee appealed. We find that the evidence does not preponderate against the finding of the trial court and affirm the decision of the trial court.

Tenn. Code Ann. §50-6-225(e) (2005) Appeal as of Right; Judgment of the Trial Court is Affirmed.

ROBERT E. CORLEW, SP. J. delivered the opinion of the court, in which JANICE M. HOLDER, J. and DONALD P. HARRIS SR. J., joined.

Art D. Wells, Jackson, Tennessee, for the Appellant, James W. Thornton.

Gregory D. Jordan and Todd D. Siroky, Jackson, Tennessee for the Appellee, Thyssen Krupp Elevator Mfg., Inc.

MEMORANDUM OPINION

Before the Court is an action in which the facts are largely uncontested. On March 15, 2004, James W. Thornton ("the Employee") suffered an injury to his right leg while at his place of employment and working within the course and scope of his duties as a shipping clerk. The Employee related the history to the treating physician, Mark Harriman, M.D., who testified the Employee was "walking across the floor and said his knee simply buckled and something popped

in the knee. There was no fall."[1] The Employee claims that he is entitled to compensation under the workers' compensation law, while Thyssen Krupp Elevator Manufacturing, Incorporated ("the Employer") asserts that the Employee simply suffered an idiopathic[2] injury for which no compensation is due.

The Employee had worked for the Employer and its predecessors for twenty-seven years. For the last fifteen of those years, he served as a shipping clerk. He testified he sustained an injury to his right knee on March 15, 2004, when he was searching for a "skid"[3] to find a part that he needed to complete the filling of an order. The Employee testified he was walking within the Employer's warehouse, and, when he thought that he saw the skid for which he was looking, he stopped walking. At that moment, his right knee gave way. The Employee described the incident by stating, "I had stopped to look for the skid. . . . When I stopped, the knee buckled. The top part nearly went over the bottom part. Very painful. Almost fell." He reported the incident immediately to his supervisor. The Employee attempted to work the next day. Dr. Harriman found the Employee had suffered an acute medial meniscus tear. He performed an arthroscopy and arthroscopic partial medial meniscectomey and chondroplasty of the patellofemoral joint. Post surgery, Dr. Harriman found the Employee had suffered a complex tear of the posterior horn of the medial meniscus. He had Grade II chondromalacia of the medial femoral condyle, Grade II chondromalacia of the patella, and Grade III chondromalacia of the trochlear groove.

The Employee was fifty-one years of age at the time of trial. He attended two years of high school before leaving to help his ailing father. He was unable to obtain a GED on two occasions. Before commencing work for the Employer herein, the Employee hung paneling for a mobile home manufacturer, ran a molding machine for a telecommunications company, worked as a parts receiver for a store fixture company, and worked as a general laborer and performed utility work for two construction companies. When he began work for the Employer, the Employee first worked as a utility man and as a packer and crater. For fifteen years prior to his injury, the Employee was a shipping clerk. As a shipping clerk, he pulled parts to complete orders for shipment, placed bar codes and address labels on the orders, scanned the orders, and placed them on outgoing transportation. While working for the Employer, the Employee also worked for a time as a pastor of a church.

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[1] On more than one occasion during his deposition, Dr. Harriman referred to the Employee's date of injury as March 14. He received this date as a part of the medical history. Dr. Harriman did not see the Employee until April 21, 2004. Subsequently in his deposition, Dr. Harriman related further his conversation with the Employee, saying "What he told me was that on March 14 he was simply walking across the floor and the knee buckled. There was—and something popped in his knee. There was really no injury. He was just—just walking."

[2] An idiopathic fall is one that is "unexplained in its origin." Shearon v. Seaman, 198 S.W.3d 209, 215 (Tenn. Ct. App. 2005), appeal denied (May 30, 2006).

[3] Upon question from the Court, the Employee defined a "skid." He said it is "an eight-foot skid, six foot high. And it's in a location." "Skids" are "located in metal racks concerning around the shipping department." They would be stacked on top of each other "three high." Elevator parts were placed on the "skids" and "Saran wrapped with plastic."

The treating physician, Dr. Harriman, described the Employee as a "very large man. He's 6 feet, 275 pounds . . ." Dr. Harriman found that the Employee sustained two percent anatomical impairment apportioned to the right leg, or one percent to the whole person. He did not recommend any work restrictions.

There was testimony that before the March 15, 2004 incident, the Employee had never had any buckling or difficulty with the right knee. The claim was treated as compensable by the Employer until after Dr. Harriman performed surgery. Dr. Harriman assigned a two percent right leg anatomical impairment due to the meniscectomy. He did not award any impairment for the chondromalacia of the patella, trochlear groove, or femoral condyle.

Dr. Harriman testified that he did not know why the Employee's knee buckled and explained:

> This did not look like a degenerative tear. They have a certain look to them. This looked like a tear that had happened probably about when [the Employee] said it did, and it most likely happened as he's struggling to stay on his feet after his knee buckled. I don't know why his knee buckled. It could be his arthritis, it could be his weight, it could be that he just got unlucky and his knee buckled, you know, we don't know.

Dr. Joseph C. Boals, III, M.D. conducted an independent evaluation of the Employee on October 11, 2004. Dr. Boals opined that the causation was the work the Employee did. Dr. Boals explained the incident as related to him by the Employee who informed him that

> I walked from my desk approximately fifty to seventy-five feet to a rack looking for a job number, looking up, stopped, top of my right knee went out over the bottom of the right knee. I caught myself with my left leg. I was unable to bear weight on the right knee for a while. My knee became very painful as I was walking to the office.

In response to questioning about causation and whether there was a permanent physical or anatomical impairment as a result of this injury, Dr. Boals testified that

> So that's sort of what he said. It was that incident I think that sort of really came—brought all this to a head.
> ...
> [A]s an examiner I'm going to agree that some of these arthritic changes found at surgery were probably already there, it's pretty obvious that Mr. Thornton had an incident that increased his symptoms and brought it into an aggravated state and required the surgery that he had; and even though part of the surgery involved removing some of this arthritis, it was still—the necessity was created by his injury in my opinion; and the most—the greatest functional loss here in the fact that he can't straighten his knee out any longer.

ANALYSIS

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). Thus, we are required to conduct an independent examination of the record to determine the preponderance of the evidence. With respect to the testimony of the Employee, the trial court had the opportunity to determine his credibility based upon his testimony in person before the court. When the trial court has observed the witnesses and heard their testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When the medical proof is presented by deposition, however, we must determine the weight to be given to the expert testimony and draw our own conclusions with regard to the issues of credibility with respect to the expert proof. Bohanan v. City of Knoxville, 136 S.W.3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Elmore v. Traveler's Ins. Co., 824 S.W.2d 541, 544 (Tenn. 1992). Conclusions of law established by the trial court come to us without any presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003).

The primary issue raised on appeal is whether the Employee's injury arose out of his employment. Whether an injury resulting from an idiopathic fall is compensable under the Workers' Compensation Act is a question of law. Phillips v. A & H Constr. Co., 134 S.W.3d 145, 149 (Tenn. 2004) Whether an injury arose out of and in the course of a worker's employment is a question of fact. Id. We have recognized that the causal relationship between the Employee's employment and the injury must be established by the preponderance of the expert opinions supplemented by the lay evidence. The proof of the causal connection may not be speculative, conjectural, or uncertain. Clark v. Nashville Mach. Elevator Co., Inc., 129 S.W.3d 42, 47 (Tenn. 2004); Simpson v. H.D. Lee Co., 793 S.W.2d 929, 931 (Tenn. 1990); Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, however, and the Court must recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp.,163 S.W.3d 673, 678 (Tenn. 2005).

The trial court determined that the Employee had not shown that there was any particular hazard incident to his employment which was causally connected to his injury. The trial court also determined that stopping to look at a part did not cause the knee to buckle. The expert witnesses could not give a definitive cause as to why the Employee's knee buckled. The trial court found the injury was not compensable and dismissed the claim.

We have recognized that the Workers' Compensation laws should be "liberally construed to promote and adhere to the [purposes of the Workers' Compensation] Act of securing benefits to those workers who fall within its coverage." Martin v. Lear Corp., 90 S.W.3d 626, 629 (Tenn. 2002). Nonetheless, the burden of proving each element of his cause of action rests upon the employee. Cutler-Hammer v. Crabtree, 54 S.W.3d 748, 755 (Tenn. 2001). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the employee. Phillips, 134 S.W.3d at 150; Reeser v. Yellow Freight Sys., Inc., 938 S.W.2d 690, 692 (Tenn. 1997).

The appellant relies upon the case of Tapp v. Tapp, 236 S.W.2d 977 (Tenn. 1951). In Tapp, the Court held that when there is a sudden physical disturbance resulting from a seizure or other idiopathic condition, which contributes to cause an injury to an employee and when there is another hazard present, incident to the employment, which is the immediate cause of the accident, the resultant injury is compensable. Tapp, 236 S.W.2d at 980. On the other hand, the appellee relies upon the rule of law that an on-the-job idiopathic fall to a bare floor or to level ground is not a fall arising out of employment. Sudduth v. Williams, 517 S.W.2d 520 (Tenn. 1974); Dickerson v. Trousdale Mfg. Co., 569 S.W.2d 803 (Tenn. 1978).

In the Tapp case, the employee was driving an automobile to make a delivery of hardware while in the course of his employment. The employee had an asthmatic coughing spell, blacked out and ran into a deep ditch causing injuries. The Court found the injuries to be compensable as they were injuries 'arising out of employment' within the meaning of the Compensation Act.[4] Tapp, 236 S.W.2d at 980. Significant to the Court's decision in Tapp was the fact that the actual mechanism of injury was not the idiopathic condition, but rather the occurrence of injury by motor vehicular accident. Thus, the injuries by motor vehicle accident were compensable whether the Employee was hurt because of the negligence of another, by his own negligence, by mechanical failure, or by other reasonable circumstances resulting in an accident. Where the Employee was working within the course and scope of his duties, injuries which so occur, generally are compensable. See id. Thus, the causal connection between the Employee's injury and his employment was that he was driving a motor vehicle when he was injured. See id. at 979.

A similar result was reached in Phillips. In that case, an Employee who was traveling from his home to work in Kentucky was entitled to recover when he "lost consciousness, due to unknown causes" while driving a small truck which then collided with a tractor-trailer truck. Id. at 148. The Court held that "an injury which occurs due to an idiopathic condition is compensable if an employment hazard causes or exacerbates the injury." Id. at 150. Again, the Court determined that the key factor for the Court's consideration is not the "causal link between the employment and the idiopathic episode" but rather "a causal link between the employment and the accident or injury." Id. at 151.

Thus, the focus must be upon whether there is a hazard, incident to the employment, which caused the injury. In Tapp and Phillips the hazard was driving a vehicle while within the course and scope of the employment. The motor vehicle traveling down the highway, then, was the hazard incident to employment considered by the Court. No such hazard was present in the case now before us. Further, there was no mechanism of injury other than the Employee's own idiopathic condition.

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[4] The Court held that "we are not by this opinion irrevocably committed to the proposition that all accidents resulting from epileptic seizures, or other idiopathic conditions, are compensable. There may be in many instances no causal connection whatever between the cause of the 'black-out' and the nature of the employment. But it seems reasonable to conclude, based upon the authorities cited, that where epilepsy, or other physical disturbances, suddenly and without expectation occur and contribute to cause an injury to an employee while at work the same should be held compensable, provided there is present another hazard, incident to the employment which is generally known to exist and which is shown to be the immediate cause of the accident." *Id.* at 980.

We agree with the Employer that the facts of the case before us are most similar to Sudduth. 517 S.W.2d at 520. In that case, the Employee died from a fall on level ground. He fell, not because of any defect in the floor, and not because of any dirt or improper condition of the floor.[5] Similarly, in Dickerson, an employee fell in a bathroom after she suffered an idiopathic attack or blackout spell unrelated to her employment. In Dickerson, the floor of the bathroom was "constructed of rough concrete was level and was dry." Id. at 804-05. In both cases, the Court found that the injuries suffered by the employees resulted from idiopathic causes.

Based on all of the evidence, we agree with the Employer that the case at bar involves an idiopathic condition which is not compensable according to the Workers' Compensation Act. We do not find a sufficient relationship between the knee injury and the actions of the Employee in walking on a level floor without obstacles or obstructions and then stopping abruptly to find a part. There is no hazard incident to the employment, as in Tapp or Phillips. There was no instrument at all which caused the injury, but rather circumstances within the Employee's own body. We thus find that there is nothing which should cause this claim to be compensable. In order to be compensable, we must find the occurrence of an accidental injury which arises out of employment "when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." GAF Bldg. Materials v. George, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001).

CONCLUSION

Thus we affirm the decision of the trial court, finding that the injury is not compensable and that the claim should be dismissed. The costs on appeal will be taxed against the Employee. The Plaintiff's complaint is dismissed.

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ROBERT E. CORLEW, SPECIAL JUDGE

[5] We agree with the Employee that the similarity of the facts ends at this point. In Sudduth, the Employee was found to have suffered from an alcoholic seizure. Id. at 521. There is no evidence of use of alcohol or any other substance by the Employee in the case at bar.

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JUDGMENT ORDER

This case is before the Court upon the motion for review filed by James W. Thornton pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to James W. Thornton and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Janice M. Holder, J., not participating.